

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JANUARY DAVID, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JERRY DAVID,

Respondent-Appellant,

and

VERONICA JOHNSON and LES MILES,

Respondents.

In the Matter of EGYPTIAN DAVID, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JERRY DAVID,

Respondent-Appellant,

and

VERONICA JOHNSON and LES MILES,

Respondents.

UNPUBLISHED

October 4, 2005

No. 261032

Kent Circuit Court

Family Division

LC No. 04-050579-NA

No. 261033

Kent Circuit Court

Family Division

LC No. 04-050580-NA

In the Matter of SHAQUAN JOHNSON, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JERRY DAVID,

Respondent-Appellant,

and

VERONICA JOHNSON and LES MILES,

Respondents.

No. 261034
Kent Circuit Court
Family Division
LC No. 04-050582-NA

Before: Saad, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(g), (h), (j), and (n). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent-appellant does not challenge the sufficiency of the evidence to support the statutory grounds for termination of his parental rights. Instead, he only contends that petitioner failed to sustain its burden of proof to show by clear and convincing evidence that the best interests of the children would be served by termination. We review the trial court's decision regarding the children's best interests for clear error. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Under MCL 712A.19b(5), once the court finds that there are grounds for termination of parental rights, it "shall order" termination of parental rights "unless" it finds that termination of parental rights is "clearly not" in the children's best interests. The trial court may consider evidence from "any party" when determining whether termination is clearly not in the children's best interests. *Trejo, supra* at 353. Neither MCL 712A.19b(5) nor case law require the petitioner to prove that termination would be in the children's best interests. Even if neither party presents best interest evidence, the court may determine the best interests of the children from the evidence on the whole record. *Id.*

Petitioner presented evidence that the older children were severely emotionally disturbed over the sexual abuse they had received from respondent-appellant and were extremely fearful of him. They suffered from flashbacks and posttraumatic stress disorder and had suicidal thoughts,

attempts, and gestures. At ages ten and eleven, they were old enough to express their desire for the termination of his rights. Their therapist opined that the girls would be comforted and relieved if respondent-appellant no longer had any legal right to them. Despite his convictions of criminal sexual conduct, respondent-appellant denied that he had sexually abused his children and testified that his parental rights should not be terminated because he loved them. Respondent-appellant's attorney argued that, because the children would be in their twenties and thirties by the time he was released from prison, there was "nothing to gain by termination of his parental rights" and they would lose their right to receive any type of Social Security benefits or inheritance from respondent-appellant.

Going beyond the statutory requirements, the trial court concluded that termination of respondent-appellant's parental rights would serve the best interests of the children. We conclude that the trial court did not clearly err in its best interests determination.

Affirmed.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Jane E. Markey